IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

Union of India & Ors. Vs. Moti Lal

S.B. CIVIL FIRST APPEAL NO. 551/05

Against judgment and decree dated 30.07.2005 passed by Addl. District Judge (Fast Track), Pali in Civil Original Suit No. 03/2004 – Motilal Vs. UOI & Ors.

DATE OF PRONOUNCEMENT OF JUDGMENT :: 1ST May, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Vinit Mathur for appellants.
Mr. Anjay Kothari for respondent.

BY THE COURT:

At the request of learned counsel for parties, the matter was heard and is being disposed of at the admission stage itself.

The parties, for the sake of convenience, have been referred to as the original parties.

Facts, in brief, giving rise to the present appeal are that the plaintiff, who is respondent herein, on 26.03.2004 filed a suit before the Court of District Judge, Pali for recovery of Rs.1,38,720. The case set up by the plaintiff in the suit was that he is an authorized agent of defendants since 1977 under the Standardized Agency System floated by the Union of India's National Saving Scheme, meant for sale of Kisan Vikas Patras, NSCs, Deposits in time Deposit Accounts, Monthly Income Scheme Accounts and Senior Citizen Savings Scheme Accounts, and had deposited various sums under different schemes of the investors who are permanently residing at Pali, though carrying on their business in Maharashtra State, which totally amounted to Rupees one crore one lac and for the purpose had also submitted the required Form SB-3 got filled by the investors on 23.03.2001 and thereafter on collection of

the amount through cheques, accounts of investors were opened and passbooks were issued to them, however, on the said amounts deposited through him no commission was paid to him despite reminders. It was claimed that the said deposits entitled the plaintiff to a commission of Rupees one lac two thousands and therefore he sent a notice to the defendants under Order 80 CPC even then the commission amount of Rs.1,38,720 was not paid to him and he was deprived its use and utilization. Interest on the said amount of commission @ 12% per annum amounting to Rs.36,720 was also prayed for. In support of its case, the plaintiff filed his affidavit. The case was transferred for its trial and disposal to the Court of Addl. District Judge, (Fast Track), Pali.

The defendants, who are appellants herein, filed their written statement on 20.05.2004 and though admitted that on collection of the amounts, accounts of

investors were opened and passbooks were issued to them, however took the stand that commission on the deposits is payable only as per the terms and conditions of the agency system, which in the case of the plaintiff is Standardized Agency System and since the cheques for investment were drawn on the banks at Mumbai by the depositors' who have migrated from Rajasthan and have received the gifts like silver and gold coins under the special encouragement scheme for them, the agent is not entitled to get any commission. In better particulars, the defendants also stated that on SB-3 Forms the agent had not mentioned his name and account number therefore also he is not entitled to receive commission on those deposits. The defendants prayed for dismissal of the suit with costs and filed affidavit of Superintendent of Post Offices, Pali in support of their submissions.

The learned Court of Addl. District Judge, on 18.12.2004 framed the following

issues: -

(1) Whether the plaintiff is an authorized agent of defendants for the National Saving Schemes?

(2) Whether the plaintiff under different schemes of the defendants' deposited Rs.1,02,00,000/- of different persons?

(3) Whether the plaintiff is entitled to receive Rs.1,02,000/- as commission on the aforesaid amount?

(4) Whether the plaintiff is entitled to receive interest amount of Rs.36,720 on account of not disbursing the commission amount to him in time by the defendants?

(5) Whether the plaintiff has not acted according to the procedure and rules and for this reason is not entitled to receive the amount of commission?

(6) Relief?

Plaintiff Motilal in oral evidence examined himself as PW1, Suresh Nahata (PW2) and in documentary evidence produced Ex.1 the licence of Standardized Agency System, Ex.2 the application for opening account, Ex3 Pay-in slip, Ex.4 Format of commission receipt, Ex.5 to 24 receipts, Ex.25 Notice, Ex.26 to 28 Receipts of Notice. In defence, from the side

of defendants DW1 Mr. Narendra Arora, Head Postmaster, Pali was examined.

On conclusion of the trial, the learned Judge decided all the issues in favour of the plaintiff and decreed the suit holding the plaintiff entitled to receive commission amount Rs.1,02,000/- from the defendants with interest @12% per annum from the date of filing of suit to the date of decision and thereafter @8% till realization vide its order dated 30.05.2005.

The appellant-defendants being aggrieved of the judgment and decree dated 30.05.2005 have preferred this appeal under Sec. 96 CPC for quashing and setting aside the judgment and decree in question.

The first and foremost ground of challenge by the defendant-appellants has been that the learned trial Court totally ignored the rules on the subject which clearly provide

that the field of operation of an agent is within the State in which he is appointed but as the disputed accounts were not in accordance with Rule 19 of Chapter VI of the Post Office Small Saving Schemes Hand Book, as such the plaintiff was not entitled to receive any commission and therefore the impugned judgment and decree passed in favour of plaintiff is liable to be quashed and set aside. The counsel for defendants contended that the directives issued by the Director of Small Savings, Govt. of Rajasthan, Jaipur for commission agents at Serial No.10 clearly debars the agents from receiving any commission on the invested amounts received from the investors residing out of the State but the learned trial overlooked this aspect of the matter and decided the issues on conjectures and surmises.

On the other hand, learned counsel appearing for plaintiff-respondent supported the judgment and decree under appeal.

I have considered the submissions made before me and perused the material available on record.

The points which require consideration in the present matter are:

(i) Whether plaintiff-respondent was an authorized agent of the defendant-appellants and deposited various sums under different schemes with the defendants of the permanent residents of Pali and generated business to the tune of Rs.1,02,00,000, therefore, was entitled to receive commission amounting to Rs.1,02,000/- and since after demands made verbally and issuance of notice when amount was not paid, the suit filed by the plaintiff was liable to be decreed with interest or not?

(ii) Whether on account of Rule 19 of Chapter VI of the Post Office Small Saving Schemes Handbook since the investors, who had invested their money were doing business outside the State, the plaintiff was not entitled to claim commission?

(iii)Whether the trial Court has correctly decreed the suit?

Point No.1 & 2:

Point No.1 & 2 are inter-related, as such, the same are being disposed of together.

It is to be seen that the case of the plaintiff has been that he is an authorized agent of defendant-appellants and was entitled for commission for the business which was done by him for the defendant-appellants. This fact of the matter has not been disputed. In the written statement, the fact that plaintiff-respondent did the disputed business to the tune of Rs. 1,02,00,000 is also not in dispute. It is also not in dispute that commission on that sum comes to Rs.1,02,000/-.

The plaintiff in his statement has supported the stand taken by him in the plaint. He has also stated that the total disputed investors were 38 in numbers, whose accounts

were opened in the Post Office, the required S.B. Forms were filled-in and Pass-books were issued to them without any objection. PW2 Suresh Nahata has supported the statement given by the plaintiff. He has also stated that those investors are the permanent residents of Pali district. It appears that the objection which has been raised in the written statement was that since the investors were doing business outside the State, therefore, the plaintiff-respondent was not entitled to receive commission on the amounts invested by them. The learned trial Court, while considering this aspect of the matter, at Page 8 of the impugned judgment has stated:

> "इस संबंध में वादी का यह तर्क है कि वह केन्द्रीय सरकार का प्राधिकृत एजेन्ट है । बचत योजनाओं के प्रोत्साहन हेतु राज्य सरकार द्वारा अल्प बचत विभाग के माध्यम से जो प्रोत्साहन स्कीम निवेशकों के लिए जारी होती है उससे एजेन्ट का कोई संबंध नहीं है। उपरोक्त तर्क का प्रतिवादीगण के अधिवक्ता कोई खंडन नहीं कर पाये है और न ही उन्होंने ऐसा कोई नियम न्यायालय के अवलोनार्थ प्रस्तुत किया है कि वादी द्वारा जमा की गई निवेशकों की एक करोड़ दो लाख रूपये की

राशि वादोतर में उल्लेखित अनुसार राजस्थानी प्रवासीयों के विशेष प्रोत्साहन योजना के तहत होने से और निवेशकों को अल्पबचत निदेशालय द्वारा सिक्के दिये जाने से एजेन्ट को कमीशन देय नहीं होता।"

Then again at page 9, the trial Court stated as under:

"अन्ततः प्रतिवादी की सबसे महत्वपूर्ण आपति यह है कि वादी द्वारा अपने प्राधिकार क्षैत्र के बाहर व्यवसाय करने से कमीशन देय नहीं है। इस संबंध में वादोतर के अतिरिक्त कथन के पद संख्या-3 में यह उल्लेखित किया गया है कि वादी द्वारा प्राधिकार में उल्लेखित कार्यक्षैत्र का उल्लंघन किया है तथा वादग्रस्त निवेश से संबंधित चैक बम्बई के होने से राजस्थान राज्य के बाहर व्यवसाय करने से कमीशन देय नहीं है । पैरा संख्या-3 में यह भी उल्लेखित किया गया है कि सम्बद्ध नियमावली की फोटो कोपी आर (3) के रूप में संलग्न है लेकिन वादोतर के संलग्न ऐसी कोई नियमावली प्रस्तुत नहीं की गई और न ही बहस के दौरान प्रतिवादीगण के अधिवक्ता द्वारा वादोतर में उल्लेखित नियमावली न्यायालय के अवलोकनार्थ प्रस्तुत की गई है।"

The trial Court, thus, on the basis of admitted facts of the plaintiff being an authorized agent and there being no ouster of the claim available to the defendant-appellants, has

decreed the suit.

It shall be proper to reproduce here the relevant part of Rule 19 of Chapter VI Standardized Agency System, which reads as under:

> **19. Field of operation:-** (i) The agent is allowed to canvass investment throughout the State in which he is appointed. He can be attached to one or all the post offices under the same head post office for effecting transactions but receiving receipt books he can be attached to any one sub office or head office. In the larger cities where there are more than one head office, the agent can be attached to all the sub offices under all the head offices to effect transactions provided he furnishes security of Rs.5000. He can opt for any one head office or sub office under each head office for receiving the receipt books.
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> **Note: -** The agent is allowed to canvass business only in the State in which he is appointed. This restriction will not, however, preclude him from purchasing certificates on behalf of an investor whose permanent address as given in the application is outside the jurisdiction of the state of the issuing post office to which he is attached."

It shall also be relevant to take note

of the provisions of Rule 5 relating to modes of deposit and Rule 8 concerning the pass books of the Post Office Savings Bank General Rules, 1981.

> **"5. Mode of deposit:**(1) Deposit in a Post Office Savings Bank may be made (i) in cash (ii) by cheque or a demand draft drawn in favour of the depositor or the Postmaster and crossed generally or specially in favour of the Post Office Savings Bank or (iii) by surrender of Indian Postal Orders or Postal Orders issued by British authorities, and deposit may also be made by means of:-
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> (a) a pay order;
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> (b) an income tax refund voucher or income tax refund order;
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> (c) an interest warrant issued by the Reserve Bank of India on Defence Deposit Certificate or instalment of an Annuity Certificate;
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> (d) withdrawal or discharge of any amount payable on an account or savings certificate held by the depositor.
>
> (e)dividend warrants, interest warrants and refund orders issued by the companies/financial institutions.
>
> (2)Each deposit shall be accompanied by a pay-in-slip in the manner prescribed and the

counterfoil of the pay-in-slip shall be refunded to the tenderer duly receipted.

(3) Except as specified in the Post Office Cumulative Time Deposit Rules, 1981 and the Post Office Recurring Deposit Rules, 1981, the date of credit in an account of money deposited by the cheque or other instrument shall be the date of its encashment and not the date of its presentation.

(4)Where a deposit is made by means of an outstation cheque or instrument, collection charges at the prescribed rate shall be payable alongwith the deposit.

Note 1:- For the collection of outstation cheques' commission @ Rs.30 for a cheque upto value of Rs.1000 and beyond Rs.1000, Rs.3 per thousand or part thereof is charged at present.
(D.G. Post letter No.41/01/94-SB dated 18.10.2002)

Note 2:- The date of credit in the account of money deposited by cheque or other instrument shall be the date of encashment in respect of deposits in Savings Account, Time Deposit Account, NSS Account and MIS account and the date of presentation of the cheque in the RD Account.

Note 3: - The collection charges on outstation cheque deposited in RD, TD, NSS and MIS accounts will be recovered in cash against receipt in form ACG-67

from the depositors alongwith the cheque. In respect of outstation cheque deposited in Savings Account, the collection charges will be debited to the account as per existing procedure.

Note 4:- A certificate of balance in savings account in the prescribed form can be issued to the depositor free of charge on request. The certificate will be issued by the Head Postmaster in respect of accounts standing at sub and branch post offices.
[D.G. P&T letter No.35/26/70-SB dated 15.12.1971]

Note 5:- Rule 5 has been amended authorising the E.D. Sub Offices and Branch Offices to accept cheques and demand drafts for deposit in Post Office Savings Bank Accounts. In this connection it is made clear that these offices can now accept cheques and demand drafts for deposit only but they cannot open cheque accounts.
[D.G.P&T letter No.30-10/83-SB dated 20.09.1983]".

"**8. Pass Book:** - (1) On opening an account the depositor shall be given a pass book bearing the number of his account, his name, his address and entry of his first deposit duly initialled by an authorised official of the Post Office Savings Bank.

(2) It shall be the responsibility of the depositor to keep the pass book in safe

custody.

(3) If the pass book is lost, stolen, destroyed or spoilt while in custody of the depositor, he shall be issued a duplicate pass book on his paying a fee of ten rupees and on completion of such enquiries as the Post Office Savings Bank may consider necessary and no such fee shall be charged if the Head Postmaster is satisfied that the circumstances in which the pass book was lost, stolen, destroyed or spoilt were beyond the control of the depositor.
(MOP (DEA) Notification No.GSR 348 (E) dated 10.5.2002]

(4) The pass book shall ordinarily be presented for all withdrawals and deposits, other than those made by a cheque, and in case where a deposit or withdrawal is made without production of pass book, the pass book shall be presented to the Post Office Savings Bank as soon as possible thereafter for brining it upto date.

(5) When the pass book is returned duly completed, the depositor shall bring the errors or omissions therein, if any, to the notice of the Post Office Savings Bank forthwith and in the event of the depositor's failure to do so, the Post Office Savings Bank shall not be responsible for any loss arising from such error or omission.

(6) The pass book shall, as far as possible, be collected from

> the Post Office Savings Bank by the depositor on the same day on which it is presented to it under sub-rule (4) and where for any reason, the pass book cannot be returned on the same day, the Post Office Savings Bank shall issue a receipt in lieu thereof and such receipt shall be surrendered by the depositor at the time of collecting the pass book on a subsequent date.
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> (7) The Post Office Savings Bank shall not be responsible for any entries in the pass book not authenticated under the initials of authorised official."

A perusal of above rules/instructions nowhere suggests that if the cheques are issued by a person doing business outside the territory of Rajasthan then the amount invested by him/collected on behalf of the defendants, if deposited in the Post-office of the State of Rajasthan then in that case the agent shall not be entitled to make any claim for commission. It further appears that as regards collection charges are concerned, in relation to the cheques issued by the investors doing business outside the State of Rajasthan, it appears, collection charges have to be borne by the

investors. Rule 8 of the Post Office Savings Bank General Rules, 1981 further discloses the fact that on opening an account the depositors shall be given a Passbook bearing the number of account, name and address of the person opening the account and other relevant information. In the present case, it is not in dispute that accounts of all the disputed 38 investors were opened with the defendant and passbooks were issued to them without any objection. It appears that the dispute arose only when the plaintiff made a demand for his commission. PW2 in his statement has stated about the fact that investors are the permanent residents of the district Pali. He has also produced a Driving Licence of Pali District in relation to a depositor. Rule 19 or any other rule nowhere makes a mention that the authorized agent shall not persuade persons to invest their moneys under the schemes of defendants who are permanent residents of Rajasthan but doing business outside the State and that if any amount is invested by such persons the

agent will not be entitled to any commission. Thus, Rule 19 and other reproduced rules in the circumstances, as discussed hereinabove, nowhere debars the plaintiff to collect deposits for the defendants from investors who are residents of Rajasthan but doing business outside the State. It further appears that in case the cheques are issued by the investors doing business outside the State then in those matters the responsibility for the collection charges is of the investors. In such a situation, when the plaintiff has generated collections for the defendants with all his efforts then to oust his claim on the plea that business carried out by him was not within the State of Rajasthan, in my humble opinion, would not be proper interpretation of the provisions of Rules referred to hereinabove. It is also important to notice here that after opening the accounts, the Passbooks were issued to the investors without any objection as information regarding everything was stated in the S.B. Forms filled-in on behalf of the investors or

by the investors themselves, then it does not lie in the mouth of defendants to reject the claim made in relation to the work done by plaintiff on behalf of the defendants. What plaintiff has done is that he persuaded the investors with his best efforts to invest their amount under various schemes launched by the defendant-appellants. The investors are the permanent residents of Pali. It is a different thing that they are having their businesses in some other States or they have issued cheques of the Banks which are in Maharashtra or somewhere else. The trial Court has considered this aspect of the matter and I do not find any reason justifiable to take a view different than the one taken by the learned trial Court. One of the objections raised by the defendants is that in the S.B. Forms filled, there is no mention of the name of the plaintiff but to reject the claim of the plaintiff on such a technical ground is too harsh. It is also significant to mention here that when inspite of repeated requests made by the defendant no

heed was paid by the defendants, the plaintiff had to file the suit after giving notice to the defendants.

A careful scrutiny of the evidence led in this case is clearly suggestive of the fact that the plaintiff in the facts and circumstances of the present matter is entitled to claim his commission and the trial Court has correctly interpreted Rule 19 taking into consideration the other facts and circumstances of the case. It is not necessary to discuss the evidence in detail as the only point involved in this case is as to whether in the present facts and circumstances of the case the trial Court has correctly decreed the suit. The answer to point No.1 & 2 is thus in affirmative.

Point No.3:

As discussed above, as I am of the opinion that the plaintiff-respondent being an authorized agent of the defendant-appellants is

entitled to claim commission for generating collections and there appears to be no violation of the rules in the facts and circumstances of the case so as to disentitle him from receiving his commission, in light of the discussions made in relation to Point No.1 & 2 and the answer thereto, the answer to point No.3 is that the trial Court has correctly decreed the suit and the appeal of the appellant being devoid of merit requires dismissal by this Court.

In the result, the appeal stands dismissed.

(SATYA PRAKASH PATHAK)J.

/jpa